

CONTRACTOR AGREEMENT

THIS AGREEMENT entered into this ____ day of April 2011, by and between HOUSING AUTHORITY OF THE CITY OF ALAMEDA (hereinafter referred to as "AHA"), and Empire Engineering and Construction (a California Corporation), whose address is 675 Hegenberger Road, Suite 216, Oakland, CA, 94621 (hereinafter referred to as "Contractor"), in reference to the following:

RECITALS:

A. AHA is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.

B. AHA and Contractor desire to enter into an agreement for the replacement of eight trash enclosures at Eagle Village and Parrot Village, 1850 Wood Street and 721A Eagle Avenue, respectively, located in Alameda, CA. in accordance with Specifications, Special Provisions and Plans, filed in the office of the AHA on March 7, 2011.

NOW, THEREFORE, it is mutually agreed by and between the undersigned as follows:

1. TERM:

The Contractor shall begin work within five (5) working days after receiving Notice to Proceed from AHA to commence the work and shall diligently prosecute the work to completion before June 30, 2011.

2. SERVICES TO BE PERFORMED:

Contractor agrees, at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with Scope of Work and Specifications, and General Conditions, which Scope of Work and Specifications, and General Conditions, are attached hereto as Exhibits "B", and "C", respectively, and are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein.

3. COMPENSATION TO CONTRACTOR:

Contractor shall be compensated for services performed pursuant to this Agreement in the amount of \$148,500.00. An additional \$29,700.00 shall be budgeted for potential change orders, for a contract total not to exceed \$178,200.00 and in a manner as set forth in Exhibit "A" and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the AHA, with checks drawn on the treasury of said AHA. Payment shall be made for 90 percent of the value of the work. The AHA shall retain 10 percent of the value of the work as partial security for the completion of the work by Contractor. Retained amounts shall not be construed as acceptance of defective work. No interest will be paid to Contractor on retained funds.

4. **TIME IS OF THE ESSENCE:**

Contractor and AHA agree that time is of the essence regarding the performance of this Agreement.

It is agreed by the parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in paragraph 1 above, damage will be sustained by the AHA, and that it is and will be impracticable to determine the actual damage which the AHA will sustain in the event of and by reason of such delay and it is therefore agreed that the Contractor will pay to the AHA the sum of Two Hundred Dollars (\$200.00) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the AHA may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified the AHA shall have the right to extend the time for completion or not, as may seem best to serve the interest of the AHA; and if it decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, his or her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which shall accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the AHA, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Consultant shall within one (1) day from the beginning of such delay notify the AHA in writing of the causes of delay. The AHA shall ascertain the facts and the extent of the delay and its findings of the facts thereon shall be final and conclusive.

5. **STANDARD OF CARE:**

Contractor agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the AHA nor have any contractual relationship with AHA.

6. **INDEPENDENT PARTIES:**

AHA and Contractor intend that the relationship between them created by this Agreement is that of employer-independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services.

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None of the benefits provided by AHA to its employees, including but not limited to unemployment insurance, workers' compensation coverage, vacation and sick leave are available from AHA to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Contractor shall indemnify and hold AHA harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

8. **NON-DISCRIMINATION:**

Consistent with AHA's policy that harassment and discrimination are unacceptable employer/employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, an AHA employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a breach of this Agreement.

Contractor certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741), in accordance with requirement of state and federal law. Contractor shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

- a. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.
- b. Selection for training, including interns and apprentices.

Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age or condition of physical or mental handicap, in accordance with requirements of state and federal law.

Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Contractor's commitments under this paragraph.

Contractor certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to race, color, religion, national origin, ancestry, sex, age or

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condition of physical or mental handicap, in accordance with requirement of state and federal law.

In accordance with applicable state and federal law, Contractor shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

If the AHA finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which AHA may determine to cancel, terminate or suspend this Agreement. While AHA reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated state and federal anti-discrimination laws shall constitute a finding by AHA that Contractor has violated the anti-discrimination provisions of Agreement.

The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this paragraph, AHA shall be entitled, at its option, to the sum of \$500.00 pursuant to Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.

Contractor hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Contractor receiving Federal Financial Assistance. In addition, Contractor shall comply with the Uniform Federal Accessibility Standards, and Contractor, Engineer or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

Contractor's attention is directed to laws, including but not limited to:

A. **CIVIL RIGHTS/EQUAL OPPORTUNITY**

(1) Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(2) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any

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program or activity funded in whole or in part with funds made available pursuant to the Act.

B. **EMPLOYMENT AND CONTRACTING OPPORTUNITIES**

(1) Section 3. Section 3 of the Housing and Urban Development Act of 1968 requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area in which the project is located, or owned in substantial part by persons residing in the same metropolitan area as the project.

C. **PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES**

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities including but not limited to:

(1) Nondiscrimination on the Basis of Disabilities (28 CFR 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs.

(2) Nondiscrimination on the Basis on Handicap (24 CFR 8). These regulations implement Section 504 of the Rehabilitation Act of 1973, as amended, as cited in Section 109 of the Housing and Community Development Act.

Any federally-assisted alteration to a facility, its permanent fixtures or equipment but not including normal maintenance or repairs, roofing, interior decoration or changes to its mechanical systems, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 CFR 3) and with paragraph (3) immediately below.

(3) Architectural Barrier Act of 1968. Any building or facility, excluding privately-owned residential structures, designed, constructed or altered with federal funds shall comply with the Uniform Federal Accessibility Standards, 1984 (41 CFR 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

In resolving any conflict between the accessibility standards cited in paragraphs (1), (2) and (3) above, the more stringent standard shall apply.

9. **INDEMNIFICATION\HOLD HARMLESS:**

Contractor shall indemnify, defend, and hold harmless AHA, its Board of Commissioners, Housing Commission, officers, employees and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Contractor's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

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10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Contractor shall furnish AHA with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the AHA by certified mail. It is agreed that Contractor shall maintain in force at all times during the performance of the Agreement all appropriate coverage of insurance acceptable to AHA and licensed to do insurance business in the State of California. Endorsements naming the AHA as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Contractor shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	each occurrence
	\$2,000,000	aggregate
Property Damage:	\$1,000,000	each occurrence
	\$2,000,000	aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000	per accident
	\$2,000,000	aggregate
Property Damage:	\$1,000,000	per accident
	\$2,000,000	aggregate

OR

Combined Single Limit: \$1,000,000 per accident

B. **SUBROGATION WAIVER:**

Contractor agrees that, in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery.

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Contractor hereby grants to AHA, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or AHA with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against AHA by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Contractor, at any time during the term hereof, should fail to secure or maintain the foregoing insurance, AHA shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

AHA, it's Board of Commissioners, Housing Commission, officials, employees and volunteers shall be named as an additional insured under all insurance coverages, except workers' compensation insurance. The naming of an insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by AHA are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. **BONDS:**

Contractor shall furnish the following bonds from a bonding company acceptable to the AHA Attorney:

1) **Performance:**

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

2) **Payment:**

A payment bond in the amount of 100% of the total contract price is required to provide a source of compensation for unpaid subcontractors, suppliers, or workers who have furnished goods or services for the project.

12. **PROHIBITION AGAINST TRANSFERS:**

Contractor shall not assign, sublease, hypothecate or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without prior written consent of AHA. Any attempt to do so without said consent shall be null and void, and any assignee, sub lessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from AHA under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent, but written notice of such assignment shall be promptly furnished to AHA by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint venture or syndicate or co tenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL:**

Unless prior written consent from AHA is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing an estimated cost for the subcontractor's services. Approval of the subcontractor may, at the option of AHA, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of worker's compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. **PERMITS AND LICENSES:**

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City of Alameda Business License that may be required in connection with the performance of services hereunder.

15. **REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of AHA.

No report, information or other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by AHA.

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Contractor shall, at such time and in such form as AHA may require, furnish reports concerning the status of services required under this Agreement.

16. **RECORDS:**

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by AHA that relate to the performance of services under this Agreement.

Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services.

All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of AHA or its designees, and gives AHA the right to examine and audit same, and to make transcripts there from as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

17. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to AHA shall be addressed to AHA at:

Housing Authority of the City of Alameda
701 Atlantic Avenue
ALAMEDA, CA 94501-2161
Attention: Robert G. Haun, Maintenance and Facilities Manager

All notices, demands, requests or approvals from AHA to Contractor shall be addressed to Contractor at:

Empire Engineering and Construction, Inc.
675 Hegenberger Road, Suite 216
OAKLAND, CA 94621
Attention: Clifton J. Burch, President

18. **RESTRICTIONS ON LOBBYING:**

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or agreement.

19. URBAN RUNOFF MANAGEMENT:

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

A. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season [October 15], in site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site.)

B. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

C. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed, and the wash water shall be collected and disposed of off site in an appropriate location.

D. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.

E. Contractor shall maintain a clean work area by removing trash, litter and debris at the end of each work day. Contractor shall also clean up any leaks, drips and other spills as they occur.

The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specifications and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this program will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance of the above program is two hundred and fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the contractor, pursuant to Cal. Water Code §13385.

20. REQUIREMENT TO PAY PREVAILING WAGES:

Consistent with U.S. Department of Housing and Urban Development and State of California guidelines regarding payment of prevailing wage rates on public works projects, Contractor shall comply with all requirements set forth in Labor Code section 1770 et seq. The AHA shall require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work. Contractor will submit weekly certified payroll records to the AHA for all employees and subcontractors in a preapproved format or an AHA-provided form.

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Any delay in remitting certified payroll reports to the AHA upon request from the AHA will result in either delay and/or forfeit of outstanding payment to Contractor.

21. **NO SMOKING, DRINKING OR RADIO USE:**

Contractor agrees and acknowledges that smoking of tobacco products, drinking alcoholic beverages, and listening to radios is prohibited at the work site, including individual units, common areas, and every building and adjoining grounds. Contractor shall ensure that his/her employees and suppliers comply with these prohibitions.

22. **UTILITIES:**

Contractor shall pay all charges for fuel, gas, water, electricity, telephone services and any other utilities necessary to carry on the operations of Contractor.

23. **NUISANCE:**

Contractor shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

24. **SAFETY REQUIREMENT:**

All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. AHA reserves the right to issue restraints or cease and desist orders to Contractor when unsafe or harmful acts or conditions are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards to persons and/or property resulting from his or her operations. Any hazardous condition noted by Contractor, which is not a result of his or her operations, shall immediately be reported to AHA.

25. **HOURS OF OPERATION:**

Contractor shall be allowed to operate on site weekdays only between the hours of 8:00 a.m. and 5:00 p.m. unless prior written approval has been secured from AHA to do otherwise.

26. **TERMINATION:**

In the event Contractor hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Contractor from AHA of written notice of default, specifying the nature of such default and the steps necessary to cure such default, AHA may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

AHA shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

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27. **COMPLIANCES:**

Contractor shall comply with all laws, state or federal, all City of Alameda ordinances, and rules and regulations enacted or issued by AHA.

28. **CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Courts of the County of Alameda, the State of California.

29. **ADVERTISEMENT:**

Contractor shall not post, exhibit, display or allow to be posted, exhibited, or displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from AHA to do otherwise.

30. **WAIVER:**

A waiver by AHA of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein whether of the same or a different character.

31. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both AHA and Contractor.

32. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

33. **CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

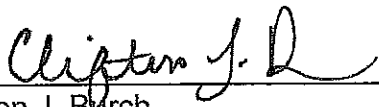
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IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.


Empire Engineering and Construction, Inc.

HOUSING AUTHORITY
OF THE CITY OF ALAMEDA



Clifton J. Burch
President

Michael T. Pucci
Executive Director

Approved as to Form


ASSISTANT GENERAL COUNSEL

HOUSING AUTHORITY OF THE CITY OF ALAMEDA (AHA)

BID FORM

PROJECT: REPLACEMENT OF EIGHT TRASH ENCLOSURES AT EAGLE AND PARROT VILLAGE

BID DEADLINE AND BID OPENING: MONDAY, MARCH 7, 2011, AT 11:00 a.m. at the Housing Authority, 701 Atlantic Avenue, Alameda, CA.

1. The undersigned, having become familiar with the local conditions and federal requirements affecting the cost of work and with the Request for Proposal, hereby submits this bid for all work shown on the Contract Specifications. It is understood that the right is reserved by the Housing Authority to reject any and all bids. If written notice of acceptance of this bid is mailed or otherwise delivered to the undersigned within 90 days after the opening thereof, the undersigned agrees to execute the delivery of a contract in the prescribed form.
2. A bid bond in the amount of five percent (5%) of the bid amount is required as security for this bid.
3. The bidder represents that he/she has [X] / has not [] participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Orders 10925, 11114 or 11246 (see excerpts following this form); that he/she has [X] / has not [] filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts, which are exempt from this clause.)
4. The contractor covenants and agrees that he/she possesses the necessary skill required to determine the adequacy of the drawings and specifications for the purpose of arriving at the contract price, and that he/she has exercised this skill, and that he/she find said drawings and specifications fit and sufficient for the purpose intended and free from ambiguities.
5. Each bidder must possess a valid California Contractor's license in the Classification covering the work required by this contract at the time of the bid opening date.

AWARD WILL BE MADE BASED UPON THE LOWEST RESPONSIVE LUMP SUM TOTAL

PROVIDE PRICING FOR THIS PROJECT AS FOLLOWS:

All bidders attest to having examined the Invitation for Bids (IFB), including the Contract Specifications as Modified and the project site. Bidders must complete and submit this form as a part of their bid.

The undersigned proposes to complete the Scope of Work as outlined in the specifications for the following amount:

LUMP SUM TOTAL: \$ 148,500.00

ACKNOWLEDGEMENT OF ADDENDA:

Addenda #1 CB/03/03/2011 Date: 03/07/2011

Addenda #2 _____ Date: _____

Change orders will only cover unknown conditions. The total number of additional hours is not expected to exceed 10% of the total amount indicated above.

An Alameda Business License, a Performance Bond and a Payment Bond of 100% (or alternative as outlined in this IFB), and all insurance requirements must be met before the Notice to Proceed can be issued.

The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.
The following are excerpts from Executive Orders 10925, 11114 and 11246.

Executive Order 10925 Establishing the President's Committee on Equal Employment Opportunity

This Executive Order established the President's Committee on Equal Employment Opportunity. It outlines obligations under government contracts and subcontracts. It includes the following provisions:

"(1) the contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin....

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Executive Order 11114 Extending the Authority of the President's Committee on Equal Employment Opportunity

This Executive Order amends the previous Executive Order to clarify the authority of the President's Committee on Equal Employment Opportunity.

Section 301 of Executive Order No. 10925 of March 6, 1961, is amended to read: Except in contracts exempted in accordance with section 303 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the provisions that are shown in the Housing Authority's standard contract.

Executive Order 11246 EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin

This Executive Order outlines the affirmative action guidelines required for contracts involving federal funding. Each Government contractor with 50 or more employees and \$50,000 or more in government contracts is required to develop a written affirmative action program (AAP) for each of its establishments.

A written affirmative action program helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractor's workforce. If there are problems, the contractor will specify in its AAP the specific procedures it will follow and the good faith efforts it will make to provide equal employment opportunity. Expanded efforts in outreach, recruitment, training and other areas are some of the affirmative steps contractors can take to help members of the protected groups compete for jobs on equal footing with other applicants and employees.

EXHIBIT A

BID SUBMITTED BY:

By my signature hereunder, as the Contractor, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Bid, the Contract will include funds sufficient to allow the Contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that Housing Authority of the City of Alameda will be relying on this certification if it awards the Contract to the undersigned.

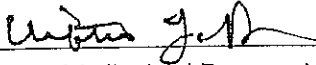
Empire Engineering & Construction, Inc. 510.632.6500

Name of Company

Phone:

675 Hegenberger RD #216 Oakland, Ca. 94621

Address of Company



Signature of Authorized Representative

Clifton J. Burch/President

Printed name of Authorized Representative

854381

CA Contractors License # and expiration date

END OF DOCUMENT

EXHIBIT B

SCOPE OF WORK

1. GENERAL

- .1 The General Contractor (Contractor) shall be responsible for providing the management services and specialized licensed trades in order to perform the described services. Described services may be, but are not limited to: Demolition, Carpentry, Concrete, Masonry, Asphalt Striping, and Structural Steel.
- .2 Contractor shall be responsible for the demolition, removal, and legal off site disposal of existing wood framed trash enclosures at five locations on the Parrot Village site and three locations on the Eagle Village site. Demolition shall include existing foundation, paving, soils, and landscape. Such disposal shall be performed in compliance with all applicable laws. Demolished materials shall not stored on site during this work.
- .3 Site work includes removal of existing curbs and soil to create an accessible approach, demolition of existing sidewalk to create an accessible curb cut, and extending existing sidewalks to create an accessible path of travel.
- .4 The Housing Authority of the Qty of Alameda (AHA) shall provide access to Contractor for this work. Contractor shall protect adjacent surfaces, landscaping, irrigation and tenant vehicles to complete this work. All protection materials shall be clean and not leave any dirt or residue on protected surfaces.
- .5 Contractor shall coordinate temporary location for trash and recycling during the construction period. All enclosures are to be located along an accessible path of travel; several of the locations will require site work to accommodate an accessible path of travel.
- .6 Contractor to provide and construct new foundation, concrete masonry unit (CMU) trash enclosure, composite lumber trellis and roof structure, polycarbonate roof, and tube steel gate in accordance with Specifications and Drawings. Any required demolition to facilitate the installation of new materials shall be included as part of this scope of work.
- .7 Contractor shall carefully read all Specification and Drawings and confirm site conditions prior to commencement of work, and shall immediately notify AHA if site conditions differ from Specifications and Drawings.
- .8 Install all products and materials in accordance with manufacturer's specifications.
- .9 Contractor to take particular care in preserving the integrity of the adjacent surfaces and landscaping, and ensure consistency of work in order to maintain the overall appearance of the sites.
- .10 All work performed must be performed by properly trained and skilled personnel.

2. PERMIT AND INSPECTIONS

EXHIBIT B

- .1 AHA to apply for and receive approved Building Permit from the City of Alameda Department of Community Development prior to commencement of site work.
- .2 Contractor to schedule and coordinate all Building Inspections and provide original Finaled "hard card" upon completion of work.

3. SUBSTITUTIONS

- .1 Any substitutions shall be presented to AHA prior to bid submission for approval. Substitutions shall meet or exceed specifications. No changes or substitutions will be allowed after bid submission unless it is determined that product is obsolete or is not readily available.

4. WARRANTY

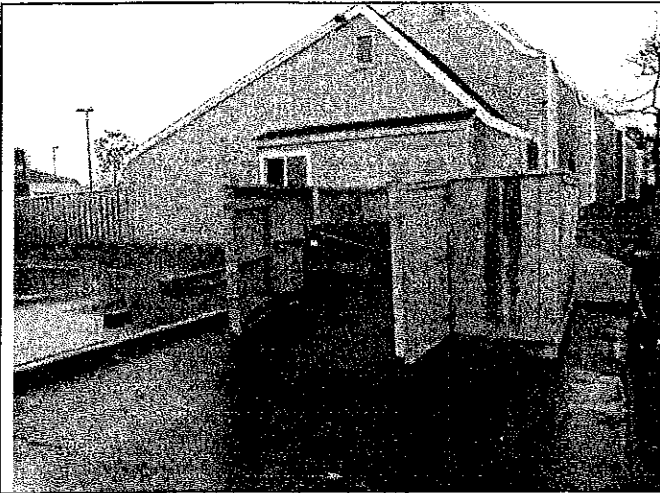
- .1 Contractor shall warranty work for one (1) year from date of installation. Warranty is for defects in materials, workmanship, installation, leaks, deterioration of material and surface performance. When notified by AHA, contractor shall promptly investigate and address deficiencies.
- .2 Within the warranty period Contractor shall repair, replace or refund the repair price of defective materials or installation.

END OF SECTION

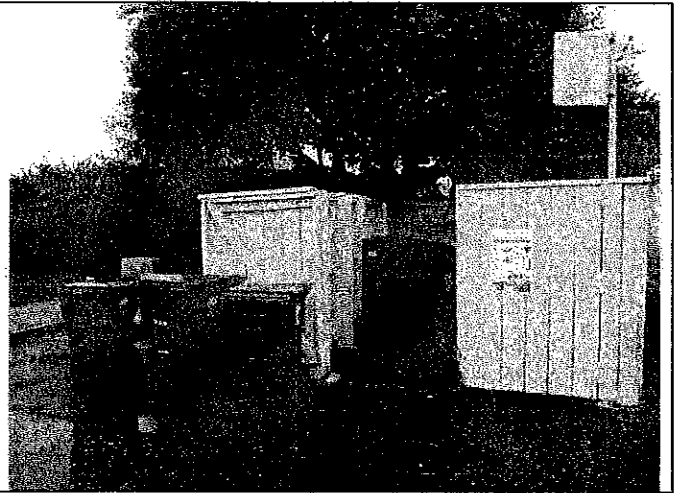
EXHIBIT B

EXISTING CONDITIONS EAGLE VILLAGE AND PARROT VILLAGE

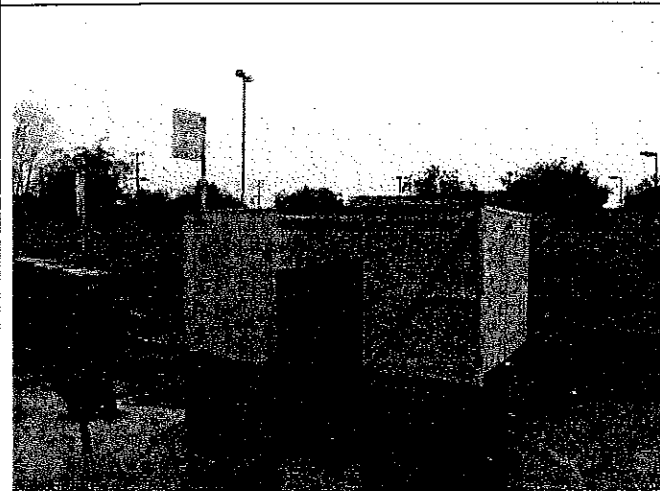
EAGLE VILLAGE



Eagle Village Existing Enclosure #1



Eagle Village Existing Enclosure #2



Eagle Village Existing Enclosure #3

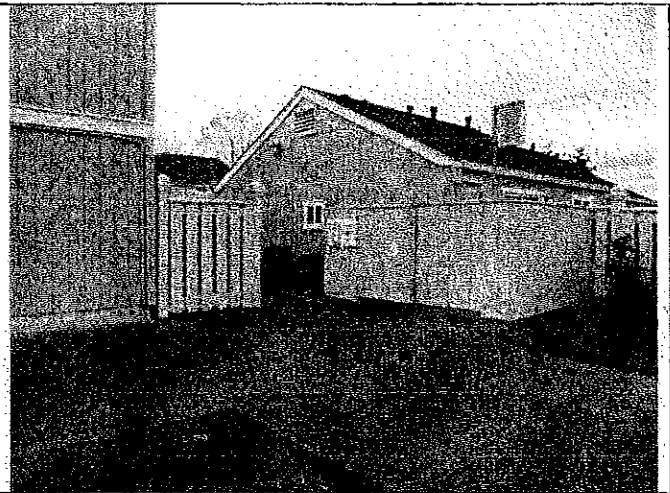
END OF SECTION

EXHIBIT B

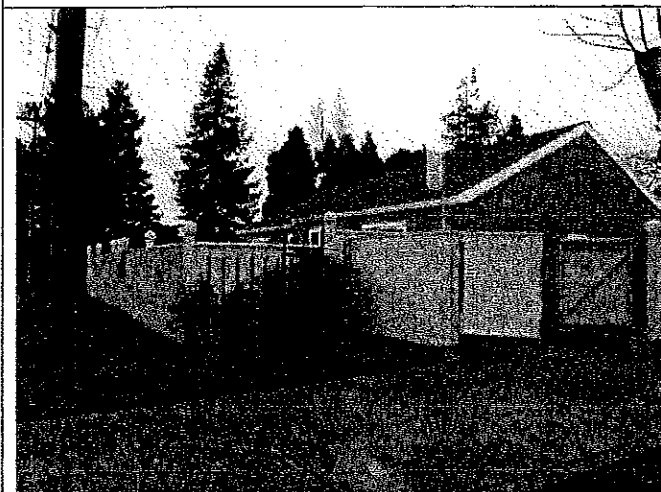
PARROT VILLAGE



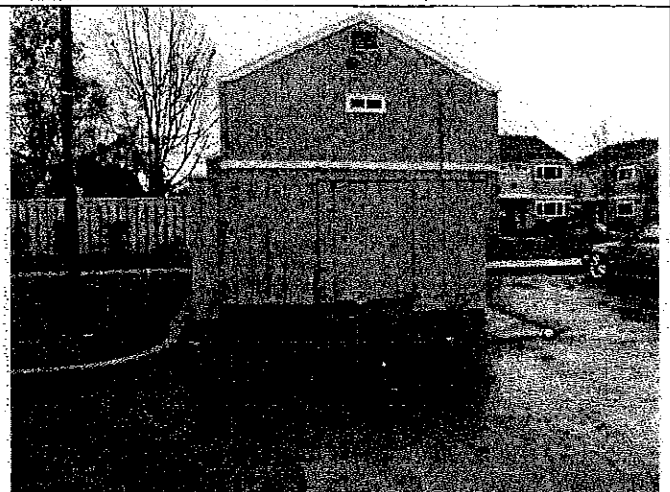
Parrot Village Existing Enclosure #1



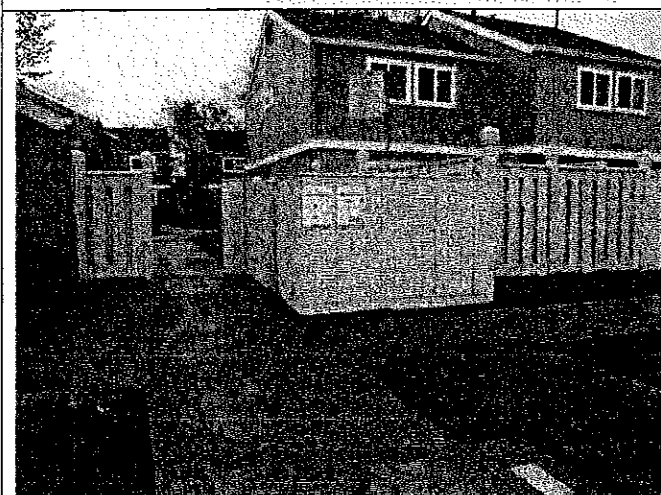
Parrot Village Existing Enclosure #2



Parrot Village Existing Enclosure #3



Parrot Village Existing Enclosure #4



Parrot Village Existing Enclosure #5

EXHIBIT B

SITE MAPS

EAGLE VILLAGE

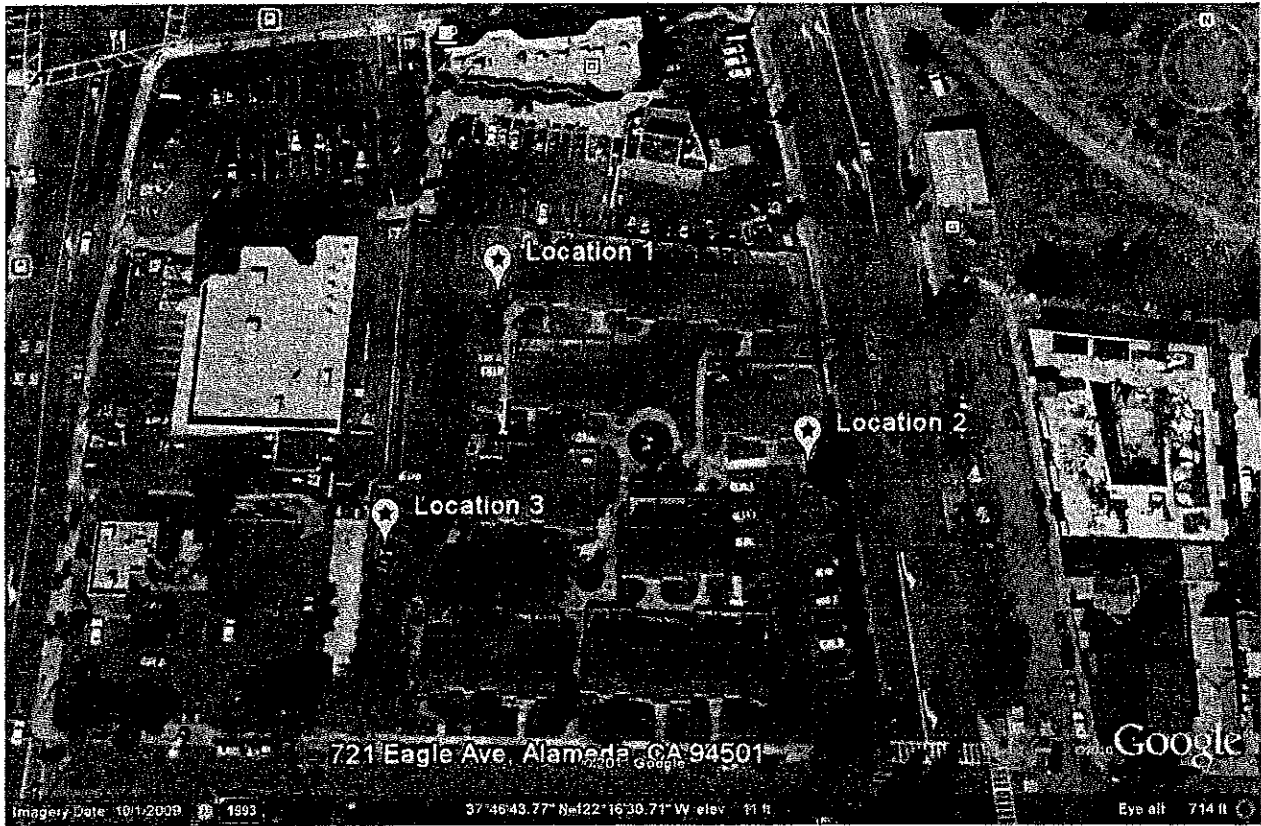


EXHIBIT B

PARROT VILLAGE



END OF DOCUMENT

EXHIBIT B

SPECIFICATIONS AND DRAWINGS EAGLE VILLAGE

[Refer to Appendix A]

END OF SECTION

EXHIBIT B

SPECIFICATIONS AND DRAWINGS PARROT VILLAGE

[Refer to Appendix B]

END OF SECTION

EXHIBIT C

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

1. Definitions

- (a) **"Architect" or "A/E"** means the person or other entity that may be engaged by AHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When AHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) **"Claim,"** means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim.
- (c) **"Contract"** means the contract entered into between the AHA and the Contractor. It includes the forms of Bid, the Performance and Payment Bond or Bonds or other assurance of completion, these General Conditions of the Contract for Construction, the applicable wage rate determinations, and any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (d) **"Contracting Officer"** means the person delegated the authority by AHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of AHA in all dealings with the Contractor.
- (e) **"Contractor"** means the person or other entity entering into the contract with the AHA to perform all of the work required under the contract.
- (f) **"Drawings"** means the drawings (if any) contained in the Specifications and as described in the contract clause.
- (g) **"HUD"** means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (h) **"Project"** means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (i) **"AHA"** means the Housing Authority of the City of Alameda organized under applicable state laws which is a party to this contract.
- (j) **"Specifications"** means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (k) **"Work"** means materials, workmanship, and manufacture and fabrication of components of the Project.
- (l) **Request for Information ("RFI"):** A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for the AHA to submit Contract Document clarifications or supplements to Contractor.
- (m) **Request for Proposals ("RFP"):** A document issued by AHA to Contractor whereby AHA may initiate changes in the Work or Contract Time as provided in Contract Documents.
- (n) **Site:** The particular geographical location of Work performed pursuant to Contract Documents.

EXHIBIT C

2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by AHA pursuant to the clause entitled Availability and Use of Utility Services herein. As part of the Work, Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and certification, hoisting facilities, shop drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. The contractor will be responsible for pulling permits.

Contractor shall at all times be deemed an independent contractor. Divisions and sections of Specifications and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the work to be performed by any specific trade. Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures. The Contractor shall coordinate work of various subcontractors, crafts, and trades as necessary to perform the Contract. All communications regarding subcontractors' work shall be through the Contractor. No Subcontractor shall initiate direct contact or communication with the AHA or Architect.

Contractor shall perform reasonably implied parts of Work as "incidental work" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Project shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation complete, satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents including required tasks to be performed under the specifications. Contractor shall perform incidental work without extra cost to AHA. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be include in price bid and Contract Sum.

- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least 10 percent (unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the AHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor. Contractor shall assign a competent, full time superintendent to this work who shall be at the job site at all times work is being performed. The superintendent shall represent the Contractor in his/her absence; all directions given to the superintendent shall be as binding as if given to the Contractor. The Contractor and its superintendent shall give efficient supervision to the work, using their best skill and attention. They shall carefully study and compare all Drawings, Specifications and other instructions and shall at once report to the AHA any error, inconsistency or omission which they may discover. The Contractor shall furnish the name of his superintendent to the AHA at the Preconstruction Conference. If any change is made during the progress of the work, the Owner shall be notified in writing.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for the security of the tenant's property. The Contractor shall hold and save the AHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

EXHIBIT C

- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on AHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the AHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition. Contractor is precluded from using AHA waste disposal dumpsters.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Other Contracts

The AHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with AHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by AHA employees.

4. Preconstruction Conference and Notice to Proceed

- (a) Prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the AHA, its Architect, and other interested parties convened by the AHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The AHA will provide the Contractor with the date, time, and place of the conference.

At the Pre-Construction Conference, Contractor shall produce for review with the AHA its initial draft form of Schedule of Values and Progress Schedule. Contractor shall secure the attendance at the Pre-Construction Conference of its listed subcontractors, major suppliers, its job superintendent and scheduling personnel. Agenda will include, but not be limited to, the following items.

1. Labor Compliance requirements
2. Personnel and vehicle permit procedures
3. Use of premises
4. Location of the Contractor's on-site facilities
5. Security
6. Housekeeping
7. Submittals
8. Inspection and testing procedures, on-site and off-site
9. Utility shutdown procedures
10. Control and reference point survey procedures
11. Injury and Illness Prevention Program
12. Contractor's Initial Schedule
13. Contractor's Schedule of Values

- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

EXHIBIT C

5. Construction Progress Schedule

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the AHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

6. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:
 - (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
 - (2) the availability of labor, water, electric power, and roads;
 - (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
 - (4) the conformation and conditions of the ground; and
 - (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the AHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the AHA.
- (b) The AHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the AHA. Nor does the AHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

EXHIBIT C

- (c) Contractor shall verify figures shown before layout and request clarification or be responsible for correction. Contractor shall layout work and be responsible for lines, levels, and measurements; field verify all measurements before ordering or fabricating items. Before starting work, Contractor shall examine adjoining work on which installation is in any way dependent for perfect workmanship and fit and give written notification of any existing deficiencies detrimental to proper and timely installation of Work.

7. Differing Site Conditions

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of
 - (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or
 - (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the AHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.
- (e) Hazardous Waste Notice by Contractor shall be given in writing to AHA promptly, before any of the following conditions are disturbed, and in no event later than 24 hours after first observance, of any (a) material that Contractor believes may be hazardous waste or hazardous material, NOT PREVIOUSLY DISCLOSED as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("hazardous material"); (b) other material which may present a substantial danger to persons or property exposed thereto in connection with Work at the Site.

Except as otherwise provided in Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous waste or hazardous material where such matter is disturbed or observed as part of the Scope of Work under Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under Contract Documents), where Contractor complies with all requirements in Contract Documents and applicable law respecting such materials.

Contractor's written notice shall indicate whether the hazardous waste or material was shown or indicated in Contract Documents to be within the Scope of Work, and whether the hazardous waste or material was brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.

EXHIBIT C

Contractor shall not be entitled to any adjustment in the Contract Sum or Times regarding claimed hazardous waste or materials if (1) Contractor knew of the existence of such hazardous material or hazardous waste at the time Contractor submitted its bid; or (2) Contractor should have known of the existence of such hazardous material or hazardous waste as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or (3) Contractor failed to give the written notice within the time required by these General Conditions.

If AHA determines that conditions do not involve hazardous materials or other materials not previously disclosed or that no change in Contract Document terms is justified, AHA shall notify Contractor in writing, stating the reasons for its determination. If AHA and Contractor cannot agree on an adjustment in Contract Sum or Contract Times, Contractor shall proceed with the Work and as directed by AHA and may file a claim as provided in these General Conditions.

If Contractor does not agree to resume work based on a reasonable belief that it is unsafe, or does not agree to resume work under special conditions, AHA may order the disputed portion of work deleted from the Work, or performed by others, or AHA may invoke its right to terminate Contractor's right to proceed under Contract Documents in whole or in part. If Contractor does not agree with AHA determination of any adjustment in the Contract Sum or Times as a result, Contractor may make a claim as provided in these General Conditions.

8. Specifications and Drawings for Construction

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.
- (c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".
- (d) "Shop drawings" means drawings, submitted to the AHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The AHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- (e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the AHA reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

EXHIBIT C

- (f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) It shall be the responsibility of the Contractor to make timely requests of the AHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.
- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the AHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

9. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

10. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended (no less than standard grade), unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

Except as specifically noted in the Instructions to Bidders or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of AHA, equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Substitution Request Form as provided in Instructions to Bidders. A substitution will be approved only if it is a true equal item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, and impact on contiguous construction elements, overall schedule and design.

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(b) Approval of equipment and materials.

- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval for equipment and materials, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, manufacturers cut-sheet and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the AHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of re-testing materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Prohibition against use of lead-based paint. The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

(d) Buy American Act – Construction Materials (if Required)

Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States

(1) Definitions:

"Construction material" means an article, material, or supply brought to the construction site by the Manufacturer, Supplier, Vendor, Contractor, Subcontractor or a lower-tier subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies.

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(2) "Domestic construction material" means –

- (i) An un-manufactured construction material mined or produced in the United States; or
- (ii) A construction material manufactured in the United States. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

(3) "Foreign construction material" means a construction material other than a domestic construction material.

(4) "United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands.

(5) Record keeping and certifications:

(a) Contractor shall maintain accurate records or logs of all materials delivered or brought to the site. This record or log shall contain at a minimum the following information: Product Name; Manufacturers Name; Approximate Quantity; Country of Origin or Manufacturing; if Iron or Steel is incorporated into the Work a certification of domestic production will also be required.

(b) The record or log of materials will be available for inspection during the course of construction and shall be submitted to the Owner upon completion along with a letter from the Contractor certifying that all construction materials used on the Project was Domestic Construction Materials as defined above.

(e) Contractor shall make close inspection of materials as delivered and shall promptly reject and return defective materials without waiting for rejection by AHA. Contractor shall inspect work in progress to insure that it is of highest possible quality. Workmanship will be subject to approval of Owner; defective or substandard work shall be removed and corrected.

11. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and standards. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the AHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

12. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

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- (b) For these purposes, the Contractor shall:
- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 327 et seq.; and,
 - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.
- (d) The Contracting Officer may notify the Contractor of any noncompliance with these requirements and of the corrective action required. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the AHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.
- (f) Precaution shall be exercised at all times for the protection of persons (including employees) and property. Machinery, equipment, and all hazards shall be guarded or eliminated in accord with recommended safety provisions established by the Associated General Contractors of America, to the extent that such provisions are not in contravention of other express terms of this Contract or applicable law. The Contractor shall protect hazards with adequately constructed guardrails and/or barricades and shall provide lanterns, warning lights, and the like, as necessary. The Contractor shall eliminate attractive nuisances from the work and from the site. To this end, he shall so dispose, store, guard, and protect the premises and all work, materials, equipment and both permanent and temporary construction as to preclude the unauthorized use thereof and particularly to eliminate possible consequent injury to unauthorized persons. In addition, the Contractor shall be responsible for all required utility shutdowns consistent with the procedures of utility companies, at times appropriate to the safe execution of the work.
- (g) The Contractor shall at all times keep the AHA premises and adjoining premises, clean of rubbish caused by the Contractor's operations, and at the completion of the work ' shall remove all rubbish from and about the premises and all of his tools, equipment and temporary work and shall have the work clean and ready for use. If the Contractor does not attend to such cleaning immediately upon request, the AHA may cause such cleaning to be done by others and charge the cost of the same to the Contractors.

13. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the AHA in the condition and at the time required by the specifications.

14. Availability and Use of Utility Services

- (a) The AHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the AHA or, where the utility is produced by the AHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

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- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the AHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

15. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities
 - (1) at or near the work site and
 - (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.
- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and hold harmless the AHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the AHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

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16. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the AHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

17. Clean Air and Water Applicable to Contracts in Excess of \$100,000

- (a) Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the contract or any subcontract.
- (b) In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Contractor agrees to —
 - (1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
 - (2) Promptly notify the Contracting Officer if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
 - (3) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
 - (4) Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

18. Energy Efficiency

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

19. Inspection and Acceptance of Construction

- (a) Definitions. As used in this clause -

- (1) "**Acceptance**" means the act of an authorized representative of the AHA by which the AHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

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- (2) **"Inspection"** means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
- (3) **"Testing"** means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to AHA inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) AHA inspections and tests are for the sole benefit of the AHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the AHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the AHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The AHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The AHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size and performance tests shall be performed as described in the contract.
- (f) The AHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the AHA not to conform to contract requirements, unless the AHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the AHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the AHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the AHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the AHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the AHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the AHA right under any warranty or guarantee.

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- (k): Contractor's obligation to comply with the Contract Documents and the standards of quality specified therein shall be absolute and not subject to waiver. Contractor may only be relieved of its obligation to comply with the Contract Documents and the standards of quality stated therein only through a written change order signed by an authorized AHA signer.
- (l) Contractor shall pay for any and all retesting upon failure of the original testing.

20. Use and Possession Prior to Completion

- (a) The AHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the AHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The AHA possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the AHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the AHA possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied. If prior possession or use by the AHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

21. Warranty of Title

The Contractor warrants title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

22. Warranty of Construction

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of one year unless otherwise indicated from the date of final acceptance of the work. If the AHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the AHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to AHA-owned or controlled real or personal property when the damage is the result of—
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the AHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

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- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed in writing, for the benefit of the AHA; and,
 - (3) Enforce all warranties for the benefit of the AHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the AHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.
- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the AHA nor for the repair of any damage that results from any defect in AHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the AHA rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

23. Prohibition against Liens

The Contractor is prohibited from placing a lien on the AHA property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

24. Contract Period

The Contractor shall complete all work required under this contract within the number of calendar days established in the notice to proceed issued by the Contracting Officer.

25. Order of Precedence

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

26. Payments

- (a) The AHA shall pay the Contractor the price as provided in this contract.
- (b) The AHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The AHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

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- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to AHA. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.
- (d) The Contractor shall submit, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than 15 days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:
 - (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
 - (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.
- (f) Except as otherwise provided in State law, the AHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 75 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the AHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the AHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require assuring the protection of the AHA interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the AHA.
- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the AHA, but this shall not be construed as
 - (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or,

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- (2) waiving the right of the AHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the AHA in the course of their employment, the Contractor shall restore such damaged work without cost to the AHA and to seek redress for its damage only from those who directly caused it.
- (i) The AHA shall make the final payment due the Contractor under this contract after
 - (1) completion and final acceptance of all work; and
 - (2) presentation of release of all claims against the AHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The AHA shall not
 - (1) determine or adjust any claims for payment or disputes arising thereunder between the Contractor and its subcontractors or material suppliers; or,
 - (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the AHA to withhold moneys from the Contractor shall in not impair the obligations of any surety or sureties under any bonds furnished under this contract.

27. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally
 - (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or
 - (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the AHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.
- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the AHA approved threshold), such modification shall not be effective until the required approval is received by the AHA.

28. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) AHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.

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- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating
 - (1) the date, circumstances and source of the order and
 - (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the AHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after
 - (1) receipt of a written change order under paragraph (a) of this clause, or
 - (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an Itemized breakdown of all increases and decreases in the contract in at least the following details:
 - (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs - when size of change warrants revision.
 - (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
 - (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contractor may not seek delay compensation for on-site or off-site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor must prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor must prove and document actual costs plus markup in order to request, claim or prove compensation for delay.

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- (i) EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), AHA SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.
- (j) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (k) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (l) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

29. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the AHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted
 - (1) by an act of the Contracting Officer in the administration of this contract, or
 - (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

30. Disputes

(a) General

Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, the Contractor shall first follow procedures set forth in the Contract. If a dispute remains, then Contractor shall give written notice to AHA that expressly invokes this Clause.

- (b) Form and Contents of Claim - Contractor's written claim must identify itself as a "claim" under this Clause and must include the following:
 - (1) a narrative of pertinent events;
 - (2) citation to contract provisions;
 - (3) theory of entitlement;

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- (4) complete pricing of all cost impacts;
- (5) a time impact analysis of all time delays that shows actual time impact on the critical path;
- (6) documentation supporting items 1 through 5; and
- (7) a verification under penalty of perjury of the claim's accuracy.

The claim shall be submitted to AHA within thirty (30) calendar days of receiving AHA written decision, or the date Contractor contends such decision was due, and shall be priced like a change order, and must be updated monthly as to cost and entitlement if a continuing claim. Routine Contract documentation, for example, correspondence, RFI, Change Order request, or payment requests shall not constitute a claim. Contractor shall bear all costs incurred in the preparation and submission of a claim.

- (c) Administration During/After Claim Submission - AHA may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by AHA to evaluate and decide Contractor's claim. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed work to final completion in accordance with AHA determination. After their submission, claims less than \$375,000.00 shall also be subject to the Local Agency Disputes Act.
- (d) Compliance - The provisions of this Clause constitute a non-judicial claim settlement procedure that, pursuant to Section 930.2 of the California Government Code, shall constitute a condition precedent to submission of a valid Government Code Claim under the California Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under clause above of the claims asserted. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion or termination of the Contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.

Claims shall be calculated in the same manner as Change Orders the modification Procedures. EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), AHA SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS, AND CONTRACTOR WAIVES ALL RIGHTS TO CLAIM SPECIAL OR CONSEQUENTIAL DAMAGES.

- (f) Claims That Aggregate Less Than \$375,000 at Project Close Out.
 - (1) As required under Section 20104, et seq., of the California Public Contract Code, if Contractor's claims at project close out aggregate of 375,000 dollars or less, then the claims shall be processed in accordance with the provisions of said Section 20104, et. Seq., relating to informal conferences, non-binding judicially-supervised mediation, and judicial arbitration.
 - (2) A single written claim shall be filed under this Article prior to the date of final payment for all claims that were filed during construction. This single claim may be a compendium of all claims filed during construction.
 - (3) Within 30 days of the receipt of the claim, the AHA may request additional documentation supporting the claim or relating to defenses or claims the AHA may have against the Contractor. If the amount of the claim is less than 50,000 dollars, the Contractor shall respond to the request for additional information within 15 days after receipt of the request. The Contractor shall respond to the request within 30 days of receipt if the amount of the claim exceeds 50,000 dollars, but is less than 375,000 dollars.

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- (4) Unless further documentation is requested, the AHA shall respond to the claim within 45 days if the amount of the claim is less than 50,000 dollars or within 60 days if the amount of the claim is more than 50,000 dollars but less than 375,000 dollars. If further documentation is requested, the AHA shall respond within the same amount of time taken by the Contractor to respond, or 15 days, whichever is greater, after receipt of the information if the claim is less than 50,000 dollars. If the claim is more than 50,000 dollars but less than 375,000 dollars and further documentation is requested by the AHA, the AHA shall respond within the same amount of time taken by the Contractor to respond or 30 days, whichever is greater.
- (5) If the Contractor disputes the AHA response, or the AHA fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The demand shall be served on the AHA within 15 days after the deadline of the AHA to respond or within 15 days of the Housing AHA response, whichever occurs first. The AHA shall schedule the meet and confer conference within 30 days of the request.
- (6) If the meet and confer conference does not produce a satisfactory result, Contractor may pursue the remedies authorized by law.

31. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the AHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AHA in completing the work.
- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the AHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the AHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the AHA.

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32. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the AHA as liquidated damages, the sum of \$200.00 for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the AHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the AHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the AHA in completing the work.
- (c) If the AHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

33. Termination for Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the AHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the AHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the AHA of a properly presented claim setting out in detail:
 - (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor;
 - (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the AHA to the Contractor or by the Contractor to the subcontractor or supplier;
 - (3) the cost of preserving and protecting the work already performed until the AHA or assignee takes possession thereof or assumes responsibility therefore;
 - (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the AHA; and
 - (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

34. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the AHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

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35. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the AHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

- (1) Workers' Compensation, in accordance with state Workers' Compensation laws.
- (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than **\$1,000,000** per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.
- (3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than **\$1,000,000** per occurrence.
- (4) **Pollution Legal Liability: (Abatement contractor)**
Comprehensive Pollution Legal Liability (PLL) coverage in the following minimum limits: Combined Single Limit: **\$1,000,000** per incident

(b) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

36. Subcontracts

(a) Definitions. As used in this contract -

- (1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.
- (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state and/or local government in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the AHA or between the subcontractor and HUD.

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37. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

38. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, sexual orientation or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, sexual orientation or handicap. Such action shall include, but not be limited to,
 - (1) employment,
 - (2) upgrading,
 - (3) demotion,
 - (4) transfer,
 - (5) recruitment or recruitment advertising,
 - (6) layoff or termination,
 - (7) rates of pay or other forms of compensation, and
 - (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation or handicap.

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- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

39. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

40. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the AHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the AHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

41. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

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- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

42. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the AHA harmless from loss on account thereof; except that the AHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

43. Examination and Retention of Contractor's Records

- (a) The AHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to
 - (1) appeals under the Disputes clause of this contract,
 - (2) litigation or settlement of claims arising from the performance of this contract, or
 - (3) costs and expenses of this contract to which the AHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

44. Labor Standards

Federal Prevailing Wage and Related Acts

Consistent with U.S. Department of Housing and Urban Development and State of California guidelines regarding payment of prevailing wage rates on public works projects, Contractor shall comply with all requirements set forth in Labor Code section 1770 et seq. The AHA shall require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work. Contractor will submit weekly certified payroll records to the AHA for all employees and subcontractors in a pre-approved format or an AHA-provided form. Any delay in remitting certified payroll reports to the AHA upon request from the AHA will result in either delay and/or forfeit of outstanding payment to Contractor.

California State Requirements

(a) Workers' Compensation

- (1) In accordance with the provisions of Section 3700 of the California Labor Code, Contractor shall secure the payment of compensation to its employees.

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(e) Public Works Contracts; Assignment to Awarding Body

In accordance with Section 7103.5 of the California Public Contract Code, the Contractor and Subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.

(f) Payroll Records; Retention; Inspection; Noncompliance Penalties; Rules and Regulations

- (1) Each Contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- (2) The payroll records enumerated herein shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records enumerated in Article 50.11a, herein, shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - c. A certified copy of all payroll records enumerated in Article 50.11a, herein, shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Articles 50.11a, herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.
- (3) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
- (4) Each contractor shall file a certified copy of the records, enumerated in Article 50.11a, herein, with the entity that requested the records within 10 days after receipt of a written request.
- (5) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.
- (6) The Contractor shall inform the body awarding the contract of the location of the records enumerated herein, including the street address and city, and shall, within 5 working days, provide a notice of a change of location and address.

EXHIBIT C

- (7) The Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section, 50.11. In the event that the Contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit 25.00 dollars for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

45. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items:
- (1) are not reasonably available in a reasonable period of time;
 - (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or
 - (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where:
- (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or
 - (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

46. Indemnity

- (a) Responsibility of Contractor and Indemnification
- (1) AHA and each of its officers, employees, consultants and agents shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
 - (2) To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify, and hold harmless AHA and each of its officers, employees, consultants and agents, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, subcontractors, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of AHA or by any person or entity required to be indemnified hereunder.
 - (3) With respect to third party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against AHA and each of its officers, employees, consultants, representatives and agents.

EXHIBIT C

- (4) Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- (5) To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party[s] indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, or completion of Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, AHA may in its discretion back charge Contractor for its costs and damages resulting there from and withhold such sums from progress payments or other contract monies which may become due.
- (6) The indemnities in Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to AHA to the extent of its active negligence.

END OF DOCUMENT